

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.32544 OF 2012

ORDER :

This writ petition is filed seeking writ of certiorari calling for the records in connection with order of 1st respondent passed in D.Dis.No.E2/5819/2009, dated 20.09.2012 confirming the orders of the 2nd & 3rd respondents passed in D.Dis.No.2414/2008 (D) dated 18.08.2009 & Rc.No.266/08 (A) dated 20.12.2008 and consequently to set aside the order of the 1st respondent dated 20.09.2012 and consequently to direct the respondents not to dispossess the petitioners from the land in Sy.No.174-2 to an extent of Acs.4.42 cents out of Acs.7.28 cents in Mandalapalli Village, Gorantla Mandal, Anantapur District.

2. It is the case of the petitioners that originally the land to an extent of Acs.7.28 cents in Sy.No.174-2 in Mandalapalli Village, Gorantla Mandal, Anantapur District was assigned in favour of one Mala Subbanna S/o.Mala Gangappa, resident of Gummaiah Garipalli, H/o.Gorantla Mandal, Anantapur District, who is no other than the father of the 4th respondent herein vide proceedings D.A.R Dis.No.351/1959, dated 23.10.1951. Thereafter the original assignee's son i.e., the 4th respondent herein and Grandson i.e., 5th respondent herein in turn sold an extent of Acs.4.42 cents out of Acs.7.28 cents in Sy.No.174-2 in favour of the petitioners herein through three registered sale deeds dated 03.11.1982, 21.02.1983 and 15.04.1985. Thereafter, the petitioners were issued pattadar pass books and

title deeds and their names have also been entered into revenue records also. That the petitioners have obtained crop loan from the co-operative society Gorantala, Anantapur District and that they have also paid cist to the Government. While so, when the 5th respondent, who is grandson of Mala Subbanna and son of Mala Ramappa, without having any manner of right, tried to interfere with the possession of the petitioners over the subject land, petitioners filed Suit O.S.No.195 of 2008 on the file of Junior Civil Judge, Penukonda, Anantapur District. During the pendency of above suit, the 5th respondent filed a petition before the 3rd respondent requesting to cancel the sale deeds dated 03.11.1982, 21.02.1983 and 15.04.1985. Basing on the same, the 3rd respondent issued show-cause notice dated 15.09.2008 and the petitioners filed objections on 22.09.2008 to the same. Without considering the said objections, the 3rd respondent Tahsildar passed order in Rc.No.266/08 (A), dated 20.12.2008 restoring the land in question to the 4th respondent's favour, who is the father of the 5th respondent and also directed the M.R.I Gorantla to take action to evict the petitioners and to take possession and to restore the land in favour of the respondents 4 and 5. Aggrieved by the orders of the 3rd respondent dated 20.12.2008, the petitioners filed appeal before the 2nd respondent, who confirmed the order of the 3rd respondent vide proceedings dated D.Dis.No.2414/2008 (D), dated 18.08.2009. Subsequently, the petitioners filed appeal before the 1st respondent, who passed orders dated 20.09.2012 confirming the

orders of the 2nd respondent. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed along with vacate stay petition by the 4th and 5th respondents stating that the subject land was assigned in favour of Mala Subbanna and petitioners have purchased the same in violation of conditions in D Form patta. It is also stated that the suit filed by the petitioners is not pending, but the same was dismissed for default in the year 2011, as such, petitioners have suppressed the said fact. It is also stated that the Tahsildar, after conducting a detailed enquiry, found that all the transactions in favour of the petitioners are in violation of the provisions of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (for short 'the Act of 1977') and the appellate authority and revisional authority have confirmed the order of the original authority and sought for dismissal of the writ petition.

4. Heard learned counsel for the petitioners, learned Assistant Government Pleader for Revenue appearing for respondents 1 to 3 and Sri N.J.Victor Moses, learned counsel for the respondents 4 and 5.

5. Learned counsel for the petitioners submits that the assignment was made in favour of one Mala Subbanna in the year 1951 and by that time, there was no prohibition of alienation of assigned lands. Both the authorities i.e., original authority and appellate authority have not pointed out about any conditions of non alienability of the subject lands. He also submits that of prohibition of alienation of assigned lands was

introduced in the year 1954 for the first time by virtue of G.O.Ms.No.1142, dated 18.06.1954, as such, the authorities have not considered that aspect, though the same is raised before them. In support of his contention, he relied on the judgment reported in **P.Govinda Reddy v. District Collector, Anantapur District**¹.

6. Learned counsel for the respondents 4 and 5 submits that the assignment was made in favour of one Mala Subbanna, being a landless poor person and any sale/purchase of the said land is in violation of the provisions of Section 3(3) of the Act of 1977 and that the assignment of land was made in the year 1954. He also submits that the petitioners by suppressing the fact of dismissal of suit filed by them, they filed present writ petition.

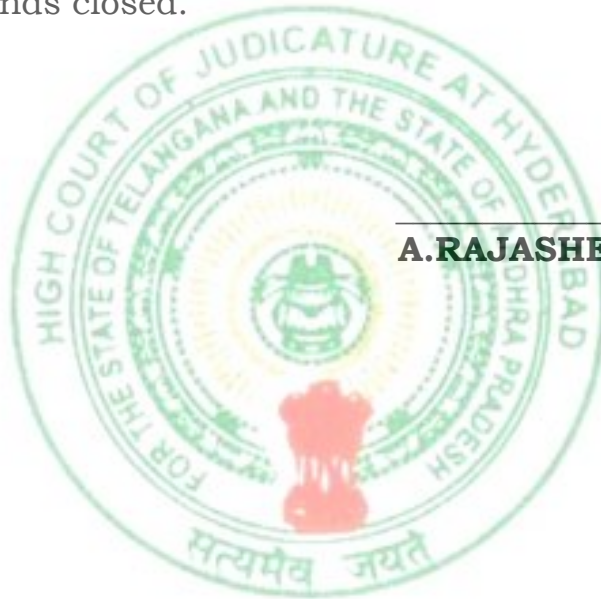
7. In this case it is to be seen that admittedly, assignment of the subject land was made in favour of original assignee i.e., Mala Subbanna on 23.10.1951. Though the authorities stated that there is violation of conditions of the patta, no such clause is referred to in the impugned orders. As per G.O.Ms.No.1142, dated 18.06.1954, non alienation of assigned lands was introduced only in 1954 and same is also not disputed by the learned AGP for revenue. By virtue of the said G.O, the Government has introduced the condition of non alienation of assigned lands. When once the assignment was made in the year 1951 and when once it is claimed that the 4th respondent sold the same to the petitioners by registered sale deeds and they were issued pattadar pass books and title deeds, their names

¹ 2012 (6) ALD 609

were also referred in revenue records, initiation of proceedings under the Act of 1977 is without jurisdiction, as the provisions of the Act have no application in respect of lands assigned prior to 1954. In view of above facts and circumstances, the impugned order of the 1st respondent dated 20.09.2012 confirming the order dated 18.08.2009 and 20.12.2008 passed by the respondents 2 and 3 respectively are quashed.

Accordingly, this writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stands closed.

22.11.2016
kvs



A.RAJASHEKER REDDY, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.32544 OF 2012



Date: 22 .11.2016

kvs

